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School Reform News

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Bush Hails DC Vouchers at Catholic School

by Kelly Amis Stewart

President George W. Bush celebrated the enactment of the first federally funded school voucher program before an audience of students, parents, and local luminaries at the Archbishop Carroll High School of Washington DC, one of the schools that intends to serve local students in the new program.

The President called it "an historic moment for education—the

DC VOUCHERS p. 6

Davey Ruling: Vouchers in Play

by Robert Holland

Sometimes a mere footnote to a U.S. Supreme Court decision can lend important clues to the decision's impact for social policy and future litigation.

As supporters and foes of school vouchers examine the February 25 *Locke v. Davey* ruling—which concluded Washington State was within its rights in denying scholarship aid to a college student studying for the ministry—they may want to take a close look at Footnote 7 of the prevailing opinion. The question is what effect *Locke*

DAVEY p. 18

McKay Scholarships Are Tops Among School Choice Programs

by Matthew Ladner

In a new study that compares the different features of school choice programs from across the nation, Florida's McKay Scholarship Program for Students with Disabilities is the top-ranked plan. Despite being much better known, the voucher programs operating in the cities of Milwaukee and Cleveland are ranked relatively low in the study, which is authored by Robert C. Enlow, executive director of the Milton and Rose D. Friedman Foundation.

Enlow ranks 13 programs around the nation—seven voucher programs and six

SCHOLARSHIPS p. 8

Gerstner Commission Endorses Teacher Merit Pay

by Robert Holland

Teacher unions long have resisted merit pay for K-12 teachers while insisting on standard pay scales based on seniority and credits amassed in education courses.

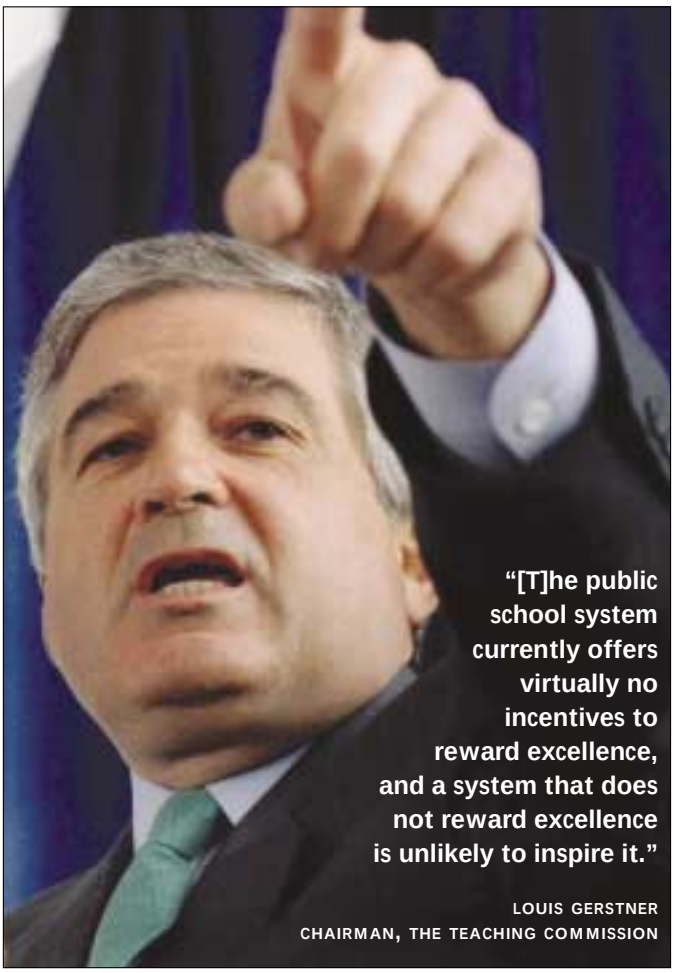
Surprisingly, however, the concept of major pay boosts for teachers who produce objectively measured gains in student achievement recently won unanimous endorsement from a 19-member privately funded commission that included the president of the nation's second largest teacher union—Sandra Feldman of the American Federation of Teachers (AFT).

Chaired by former IBM chief Louis V. Gerstner, Jr., the Teaching Commission has a smattering of Republicans but most conspicuously features Democrats who were prominent in education policy during the 1990s—among them, President Bill Clinton's Secretary of Education, Richard Riley, and former North Carolina Governor James Hunt, founding chairman of the National Board for Professional Teaching Standards (NBPTS).

"[T]he public school system currently offers virtually no incentives to reward excellence, and a system that does not reward excellence is unlikely to inspire it," said Gerstner.

While endorsing improved pay for teachers, the commission report, "Teaching at Risk," concluded painful experience demonstrates that "simply raising salaries for all teachers will not, by itself, raise student achievement." Instead, it called for "a far-reaching break with tradition"—paying teachers more when they consistently bring about improved student achievement.

MERIT p. 4


"[T]he public school system currently offers virtually no incentives to reward excellence, and a system that does not reward excellence is unlikely to inspire it."
LOUIS GERSTNER
CHAIRMAN, THE TEACHING COMMISSION

Reuters

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School Reform News
EDITORIAL OFFICES

The Heartland Institute

The Heartland Institute
19 South LaSalle Street #903
Chicago, Illinois 60603
312/377-4000 voice • 312/377-5000 fax
e-mail think@heartland.org

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PUBLISHER
Joseph L. Bast

ASSOCIATE PUBLISHER
Nikki Saret

EDITOR
Diane Carol Bast

MANAGING EDITOR
George A. Clowes, Ph.D.

DESIGN AND PRODUCTION
Kevin Fitzgerald, Ross Van Overberghe

ADVERTISING MANAGER
Nikki Saret

CIRCULATION MANAGER
Latreece Vankinscott

CONTRIBUTING EDITORS
Mike Antonucci, Robert Enlow
Robert Holland, Krista Kafer
David Kirkpatrick
Nina Shokraii Rees (on leave)
Paul Seibert, Lisa Snell, Don Soifer
Kelly Amis Stewart, Kevin Teasley
Herbert J. Walberg Ph.D., Lee H. Walker

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Paige Grants School Districts More Flexibility to Meet NCLB Requirements

Latino singer Jon Secada (right) and students from Bell Multicultural High School listen as Education Secretary Rod Paige announces new policies to help English language learners.

by Don Soifer

Education Secretary Rod Paige on February 19 announced two new Department of Education policies regarding English learners, allowing greater flexibility to states and school districts in meeting the No Child Left Behind (NCLB) Act's testing requirements. The new policies took effect immediately.

NCLB requires states and school districts to demonstrate academic progress across a range of specific subgroups within their student populations. English Learners comprise a separate subgroup under the law.

The difference between English Learners and the law's other subgroups, however, is that while ethnic minorities do not transition from one group to another with time, English Learners are reclassified out of the group when their level of English fluency justifies the switch. This has led some educators to express concern that their schools would not receive credit under the law for bringing students up to fluency standards.

In response, the new policy allows schools flexibility to include such students in the English Learner subgroup, for NCLB accountability purposes only, for up to two years after their acquired fluency allows them to transition to a mainstream classification.

"This new policy ensures that states and school districts continue to get the assessment information they need to target their efforts and help all children get to grade level in reading and math," said Paige.

The second policy concerns those English learners who are new to the United States and still in their first year attending U.S. schools. It allows states the option to give such students a waiver from taking standard English/language arts content assessments for one year.

NCLB already allows schools to test English learners with special accommodations—including translating the test into their non-English, native language—for up to three years. It also permits states to extend the practice for an additional two years on a case-by-case basis.

English learners and students with disabilities are the two populations whose treatment under NCLB seems to have attracted the greatest amount of discussion and concern in recent months. In December, the U.S. Department of Education announced a new rule giving states and school districts greater flexibility for students with disabilities under the law's testing requirements.

The so-called One Percent Rule allowed the use of alternative tests to assess academic progress for approximately 10 percent of their special education population. It was intended for students with severe disabilities who cannot be expected to sit through regular standardized tests. Other students in special education may still be assessed with special testing accommodations.

Unlike the rule announced for special education students, the provision for English learners was considered a "transitional policy" for which no specific regulation had been released as this issue of *School Reform News* went to press. This is significant because the authors of NCLB were very specific about how they intended English learners to be considered for accountability purposes. The law states that they must meet "the same challenging state academic content and student academic achievement standards as all children are expected to meet, and are not receiving waivers for the reading and language arts assessments" (Section 3121c).

House Education Committee Chairman John Boehner said the new policy "will help to ensure good schools are not incorrectly identified by states as needing improvement, while continuing to ensure limited English proficient students are learning English and making academic gains." According to Boehner, the new policy "provides flexibility to states and schools without denying these children the opportunity they deserve to learn English in our public schools."

The federal Department of Education already has granted some states wide latitude with regard to NCLB compliance, especially where English learners are concerned. Illinois, for example, was granted a one-year extension until September 2004 because of "an unforeseen decline in financial resources." As a result, the state was permitted to delay submitting standards for English learners or baseline data for English learners under the law's accountability provisions.

Meanwhile, a new report released by Illinois State Senator Miguel del Valle (D-Chicago) offers a particularly discouraging portrait of the academic progress being made by Chicago's Latino population. Del Valle, who serves as chair of the Senate's Education Committee, released the report, "Dando un Paso: Latinos in the Chicago Public Schools," in February.

Among the report's findings:

- Using a four-year cohort of students between the ages of 13 and 19, dropout rates for Latino youth in Chicago ranged from 39 to 43 percent.
- Latino children in Chicago are underrepresented in full-day kindergarten (33 percent) and over-represented in half-day kindergarten (57 percent).
- More then one-third of Chicago's bilingual education students leave the program without meeting the exit criteria.

Chicago's Mayor Richard Daley has been one of the most strident critics of No Child Left Behind. The state has been seen as a laggard in its compliance with other sections of the law as well. In December, *School Reform News* reported that only one of 10 eligible Chicago parents had applied for NCLB's tutoring provisions.

Don Soifer is executive vice president of the Lexington Institute. His email address is **soifer@lexingtoninstitute.org**.

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Merit

Continued from page 1

The commission called this a "new compact for teachers," part of which would be a commitment to raise the level of teacher pay, and part of which would recognize the need to measure a teacher's classroom performance and to compensate it accordingly. The report also called for higher salaries for teachers who serve as mentors, agree to work in the most troubled schools, or teach specialties where educators are in short supply, such as math and science.

To gauge how much a teacher has contributed to a student's test-score gains year to year, the commission recommended a value-added method be used as part of evaluating a teacher for significant pay increases. Many states, pondering how to meet teacher quality requirements of the federal No Child Left Behind Act, already are looking at a value-added assessment system pioneered by statistician William Sanders when he was at the University of Tennessee.

Ironically, given the growing national interest in the value-added approach, a pair of state legislators from Nashville introduced legislation in February seeking to kill the Tennessee Value-Added Assessment System (TVAAS). Supporters of TVAAS were rallying to save it.

So is the AFT now on board with merit pay even if the larger teacher union, the National Education Association, is not? Maybe so, maybe not: While stating that members unanimously "signed off" on its report, the Teaching Commission added individual members would "give greater or less emphasis" to specific recommendations or "prefer one method over another." Feldman issued an AFT release declaring, "Although I do not agree with some aspects of this report, I support its thrust and direction."

Feldman didn't say what she disagreed with, and her statement hailed the general idea of "teacher compensation through more professional salary arrangements that reward knowledge, skills, and performance."

In addition to merit pay, the commission—composed of leaders from government, business, and education—suggested the following reforms:

Accountability for teacher education. University presidents should raise standards for entrance to their teacher training programs and beef up the academic content of those programs. Currently, students with the highest grades and test scores are the least likely collegians to sign up for teacher training. The commission endorsed toughening the Higher Education Act so that teacher education programs failing to meet acceptable performance standards would lose federal funding.

More sensible state rules for teacher certification. The report urged states to junk low-level tests of basic competence in favor of exams measuring verbal ability and content knowledge, which have been shown to be key to effective teaching. In many states, teachers are not required to pass tests of knowledge of the subjects they teach. Licensing bureaucracies should be streamlined to make teaching more attractive to a wide range of qualified candidates, not just those who have amassed credits in professional education courses.

Empower principals as CEOs. Public school districts should give principals ultimate say over personnel decisions, as is done in most private schools. In turn, principals should grant their teachers more opportunity to benefit from mentoring and professional development, and to make more decisions independently.

The Gerstner group strongly criticized the long-dominant collaboration of education schools and state departments of education in certifying teachers largely on the basis of pedagogical courses completed. This system "discourages quality teachers from entering the field, discounts the importance of content knowledge, and is characterized by low standards and unclear relevance to classroom realities."

The report gave just one sentence of praise to the NBPTS for certifying 25,000 teachers according to what it called "high and rigorous standards." The Gerstner panel had more to say about a newcomer, the American Board for Certification of Teacher Excellence (ABCTE). It said the ABCTE is developing "high-quality teacher credentials that are portable and can be earned in a time-efficient, cost-effective manner." ABCTE plans to use student achievement as a criterion in certifying master teachers.

In his 2005 budget, President George W. Bush proposed zero federal funding for NBPTS, which since 1990 had received $129 million from the U.S. Department of Education. Last October, the Department awarded ABCTE a five-year $35 million grant to develop alternative routes to full teacher certification.

The Teaching Commission is a three-year project headquartered in New York City at the CUNY Graduate Center in Manhattan.

Robert Holland is a senior fellow at the Lexington Institute, a think tank in Arlington, Virginia. His email address is **holland@lexingtoninstitute.org**.

INTERNET INFO

The January 2004 report of The Teaching Commission, "Teaching at Risk: A Call to Action," is available online at **http://www.theteachingcommission.org**.

America's Foremost Advocate for Latino Youth: A Tribute

by Alan Bonsteel

If one trait characterized the life of Carlos Bonilla, the nation's foremost advocate for Latino youth and a leader in the school choice movement, it was his unwillingness to compromise his high ideals. Tragically, the life of this giant of a man, whose warmth and exuberance touched all who knew him, was suddenly cut short by a heart attack on February 18, 2004.

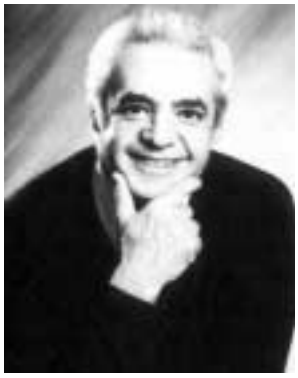
Trained as a cardiologist and with a doctorate in molecular biology, the Colombian-born Bonilla taught at the University of Colorado School of Medicine, writing several medical textbooks and leading numerous research projects.

In midlife, anguished by the dysfunctional public schools in which he saw his beloved Hispanic youth languishing, he left medicine to become a school choice advocate. Not content simply to write about the problems of Latinos, Bonilla moved into a *barrio* of the California inland port city of Stockton, where he lived among immigrant Latino laborers and dodged the bullets of the teenage gangs he wrote about.

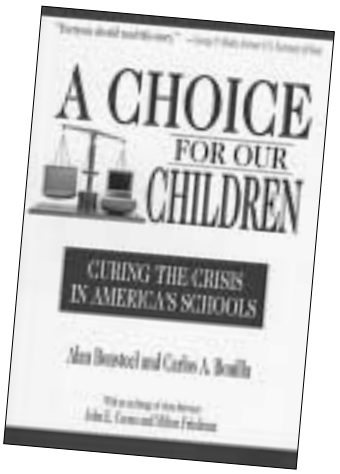
This modern-day Man of La Mancha used his sharp tongue and even sharper pen to lance opponents of school reform. He authored or co-authored 16 books, including *School Dropouts: The Tragedy of America's Undereducated Youth*. In 1997, Bonilla co-authored *A Choice for Our Children: Curing the Crisis in America's Schools*, in which he wrote eloquently of the "Zip Code Segregation" that consigned Latinos to fifth-rate public schools. More recently, he co-authored many articles with his partner Joy Goss.

In 1998, Bonilla helped persuade the California Board of Education to reform its dropout rate reporting, a change that resulted in the bombshell news a year later that California was losing half of its Latinos and a third of its students overall to dropping out.

In the last weeks of his life, Bonilla had been ecstatic about passage of the Washington DC voucher program and predicted its success would win victories for school choice across the nation. It is now left to the rest of us to make sure that dream becomes a reality throughout the land.



Carlos Bonilla: 1939-2004



Alan Bonsteel, an emergency room physician, co-authored A Choice for Our Children *with Carlos Bonilla.*

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National Teacher Certification Labeled a "Hoax"

by George A. Clowes

Despite the exalted rank implied by the term "National Board Certified," the content knowledge required of K-12 teachers who want to earn such a title through the National Board for Professional Teaching Standards (NBPTS) is only that of an advanced high school class, according to a recent commentary published in the *Teacher College Record* under the title, "National Board Certification of Teachers: A Billion Dollar Hoax."

"[D]espite claims to the contrary, the standards for National Board Certification of Teachers are closer to entry level standards for teachers and ... teachers who attain such certification do not deserve the humongous pay raises and other incentives that have been lavished on them," reported M.O. Thirunarayanan, an associate professor in the College of Education, and an associate dean in the University Graduate School, at Florida International University in Miami, Florida.

This is not the first time the wisdom of paying bonuses to nationally certified teachers has been questioned when there is no evidence they perform better than the average teacher in terms of student achievement. Michael Podgursky of the University of Missouri raised the issue in *Education Next* in 2001, and J.E. Stone of East Tennessee State University conducted research in 2002 that showed national board certified teachers in Tennessee performed no better than the average teacher in terms of student achievement gains. (See "Nationally Certified Teachers Come Up Short on Achievement," *School Reform News*, August 2002.)

"It is reasonable to expect that students taught by a Nationally Certified teacher should perform better than students of their teacher peers ..."

When he saw how much additional pay teachers received for becoming nationally certified—a 10 percent pay hike in Florida and bonuses up to $7,500 a year in other states or school districts—Thirunarayanan became curious about the standards NBPTS applies for certification.

According to NBPTS, the certification effort has cost $315.5 million at the national level. When state and local spending is included, Thirunarayanan estimates a total cost of a half-billion dollars to date and a billion dollars within a few years.

When he started his examination of NBPTS standards, Thirunarayanan said he had hoped to find a truly high-level qualification with rigorous and challenging content requirements.

"But I found otherwise," he told *School Reform News*. Examining the standards in two NBPTS science certifications, he discovered the science content requirements to be very similar to the science content students are expected to know by the time they graduate from high school.

"The National Board Certification for Teachers is by no means a high-level certification," concluded Thirunarayanan. "It is at best equal to entry-level certification for teachers."

It is the weak content standards that particularly concern Thirunarayanan. "You can't use pedagogy to teach what you don't know," he warns. But he was unimpressed by other aspects of NBPTS certification, too.

According to NBPTS, its National Board Certification process is based on "standards that describe the highest level of teaching in different disciplines." The process seeks to identify "teachers who effectively enhance student learning" and demonstrate a "high level" of knowledge and skills "as reflected" in the following five core propositions:

- Teachers are committed to students and their learning.
- Teachers know the subjects they teach and how to teach those subjects to students.
- Teachers are responsible for managing and monitoring student learning.
- Teachers think systematically about their practice and learn from experience.
- Teachers are members of learning communities.

Thirunarayanan argues these propositions are of little value in helping define a teacher of superior quality. For example, both beginning and experienced teachers should be "committed to students"; simply knowing "the subjects they teach" is not a sufficient reason to give teachers National Board Certification; and students as well as teachers are "members of learning communities."

"Even children learn from their experiences and they do not have any kind of certification, and certainly not National Board Certification," he points out.

In Thirunarayanan's view, applicants for National Board Certification should have the following minimum qualifications:

- an earned doctorate in their areas of expertise;
- five years of classroom teaching experience;
- evidence of significantly higher student achievement;
- evidence of developing innovative ways of teaching, learning, and assessment;
- publication of scholarly papers and/or books; and,
- good performance on rigorous content exams.

It is reasonable to expect that students taught by a Nationally Certified teacher should perform better than students of their teacher peers, argues Thirunarayanan, making the same point as Podgursky and Stone.

The "Hoax" paper ignited a storm of angry emails to the *Teacher College Record* Web site. Teachers denounced the commentary as an "unsubstantiated attack," calling it "offensive," "poorly reasoned," "sarcastic," "poorly written," "a blatant insult," "uninformed," and "lacking in scholarly merit."

However, a few respondents concurred with Thirunarayanan's assessment, saying the financial facts were "essentially true," the content knowledge assessment of NBPTS is sometimes "very weak," and the NBPTS process "does not identify teachers with outstanding classroom capabilities."

Another paper published by the *Teacher College Record* provides valuable insight into what teachers go through when seeking NBPTS certification. The February 2000 paper, "Communities of Practice and Discourse Communities: Negotiating Boundaries in NBPTS Certification," describes, at length and in highly inflated language, how four applicants figured out what was needed to complete the NBPTS application package. The researchers' comments on teaching and knowledge are particularly enlightening, given Thirunarayanan's findings of NBPTS's weak content requirements:

"[Classroom teachers] do not apply objective, individual knowledge; rather they function effectively in the community, becoming enculturated into that particular community's subjective point of view. Knowledge can be considered conceptual tools whose 'meaning is not invariant but a product of negotiation within the community.'"

George A. Clowes is managing editor of School Reform News. *His email address is* **clowes@heartland.org**.

INTERNET INFO

M.O. Thirunarayanan's paper, "National Board Certification of Teachers: A Billion Dollar Hoax," which appeared in the February 12, 2004 issue of *Teacher College Record*, is available online at **http://www.tcrecord.org/AuthorBio.asp?ContentID=11266&AuthorsID=18514**

Links to J.E. Stone's NBPTS study and other material, pro and con, are available online at **http://www.education-consumers.com/briefs/may2002.asp**. Michael Podgursky's paper, "Defrocking the National Board," was published in the Summer 2001 issue of *Education Matters* and is available online at **http://www.educationnext.org/20012/79.html.**

The February 2000 *Teacher College Record* paper by Robert Burroughs, Tammy A. Schwartz, and Martha Hendricks-Lee, "Communities of Practice and Discourse Communities: Negotiating Boundaries in NBPTS Certification," is available online at **http://www.tcrecord.org/Content.asp?ContentID=10449**.

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DC Vouchers

Continued from page 1

first time ever where the federal government has recognized that school choice is a viable alternative for parents." He also took the opportunity to tout the No Child Left Behind Act (NCLB) as an initiative that empowers those at the local level.

The five-year pilot voucher program will provide approximately 2,000 low-income District of Columbia students with annual vouchers worth up to $7,500 to cover private school tuition and transportation. Priority will be given to those students currently enrolled in a public school deemed failing by the DC school district.

The protracted Congressional battle over the voucher measure—which was signed into law in January—has required the Department of Education to switch into high gear to ensure the program can be implemented for the upcoming school year as required.

John Butler, president of Archbishop Carroll High School, told *School Reform News* the late start may make it difficult for some schools to participate in the inaugural year of the program or limit the number of voucher students they initially accept.

"We hope to serve at least 25 students this year, but lots of things have yet to be worked out," Butler said. "The entity that will administer the program has not yet been selected, and the recruitment and lottery strategies have not been crafted yet in final form."

But Butler is excited about the potential of the program.

"We've had an opportunity over the years to learn how to deliver a quality education," he said. "We know how to serve students from the same neighborhoods where these [voucher] students will likely be coming from. If we can assume good success this year, we will be eager to open up more seats in the future."

The Archdiocese of Washington, which likely will provide the bulk of the first available and affordable private school options for DC students, has said it hopes to make about 1,200 seats available in school year 2004-2005, mostly in elementary schools.

Efforts by opponents of the measure would keep those seats and seats in other private schools vacant and out of reach for most voucher-eligible DC families. Senator Edward Kennedy (D-Massachusetts) and Delegate Eleanor Holmes Norton (D-District of Columbia) have announced they will work to repeal the DC voucher provision by trying to shift the funds appropriated for it to the District's public schools.

President Bush and Secretary of Education Roderick Paige, however, are already looking toward expansion of the pilot program to other U.S. cities. They hope to follow the DC school voucher win with a $50 million Congressional appropriation next fiscal year to fund additional school choice programs elsewhere in the nation; the same proposal failed to win congressional support in 2003.

Paige was among those joining Bush in addressing the crowd at Archbishop Carroll, as was the president of DC Parents for School Choice, Virginia Walden Ford, who said that overall the event was "effective ... parents and other interested parties called us all weekend to say they felt that the President cared about the needs of their children."

The "several hundred people in the audience got a chance to see that this administration really is working hard to make sure that education reform continues to be a priority," she added.

Kelly Amis Stewart is an education writer and consultant. Her email address is **KAmisStewart@aol.com**.

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School Choice Litigation

Shifting from defense to offense

by George A. Clowes

The Institute for Justice (IJ) has been kept busy defending newly enacted school choice programs ever since Clint Bolick and Chip Mellor formed the Washington, DC-based public interest law firm in 1991. It is currently involved in three such cases. However, IJ also is playing offense in two other cases as a result of a proactive litigation strategy aimed at removing state-based barriers that opponents invoke to tie up school choice programs in the courts.

In addition to litigating these five school choice cases, IJ also participated in the *Davey v. Locke* case as a friend of the court. The status of the cases is summarized below, using information provided by Bolick and Mellor.

George A. Clowes is managing editor of School Reform News. *His email address is* **clowes@heartland.org**.

Chip Mellor

Clint Bolick

PLAYING DEFENSE

Scholarship Tax Credit (Arizona)
Venue: U.S. Supreme Court

The lawsuit in this case, *Winn v. Hobbs*, is a new version of *Kotterman v. Killian*, where the Arizona Supreme Court upheld the state's Scholarship Tax Credit under the First Amendment and the state constitution. In the new lawsuit, the American Civil Liberties Union attacked the same program on First Amendment grounds, but in federal court rather than state court. IJ has intervened on behalf of the program's beneficiaries, as it did in *Kotterman*.

The federal district court dismissed the lawsuit under the federal Tax Injunction Act, which requires challenges to taxes to be filed in state court. The Ninth U.S. Circuit Court of Appeals overturned that ruling, and the U.S. Supreme Court accepted review. A decision is expected no later than June 2004.

If the Court overturns the Ninth Circuit's decision, the case will be over. If it sustains the Ninth Circuit, the case will return to the district court for trial on the merits.

Opportunity Scholarships (Florida)
Venue: District Court of Appeals for the First District, State of Florida

In this case, *Holmes v. Bush*, IJ represents parents who have intervened to help defend Florida's Opportunity Scholarships Program. The program gives parents in failing public schools the choice of staying in their assigned school, transferring to a non-failing public school, or switching to a private school.

In 1999, teacher unions and other special interest groups challenged Opportunity Scholarships under both the state and federal constitutions. The federal Establishment Clause challenge was dropped after the U.S. Supreme Court upheld Cleveland's choice program in *Zelman v. Simmons-Harris* in 2002. The sole remaining legal issue is whether Florida's Blaine Amendment prevents the state from allowing parents to select a religious private school with their children's scholarships.

Just before the start of the 2002 school year, the trial court struck down the program under the Blaine Amendment. The state and IJ have appealed that ruling to the Florida Court of Appeals, and the program is continuing during the appeal.

This case was argued in March 2003 and still is awaiting a decision.

Opportunity Contract Program (Colorado)
Venue: Denver District Court

In this case, *Colorado Association of Parents, Teachers and Students v. Owens*, IJ represents families who hope to obtain scholarships under Colorado's Opportunity Contract program. This new school choice program enables parents of students in 11 Colorado school districts with at least eight failing schools each to transfer their children to participating private schools.

Because parents can select religious schools, the plaintiffs claim the program violates Colorado's Blaine Amendment and "compelled support" clause. Plaintiffs also allege the program violates Colorado's constitutional prohibitions against special legislation and interfering with local control.

Choice opponents challenged the program first on the non-religious claims. The trial court ruled in December 2003 that although the program does not constitute special legislation, it does violate the local control provision, unconstitutionally removing too much authority for local schooling from district school boards. The trial judge enjoined the state from further action to implement Opportunity Contracts.

IJ has appealed the decision to the Colorado Supreme Court, contending the decision is contrary to state court approval of a long line of legislative initiatives designed to equalize educational opportunity in Colorado—charter schools, public school choice, magnet schools, and special education programs—without fear that they impair the authority of local school districts.

PLAYING OFFENSE

Tuitioning System (Maine)
Venue: Cumberland County Superior Court, State of Maine

This lawsuit, *Anderson v. Town of Durham*, challenges Maine's exclusion of the choice of religious schools under Maine's tuitioning system, which allows parents residing in towns without public schools to choose a private school or a public school operated by some other school district for their children's education. The town school districts then pay tuition to the selected schools on behalf of the students.

For more than a century parents could choose a religious school, but in 1981 the Maine legislature excluded religious schools in the mistaken belief the Establishment Clause requires exclusion. Despite the U.S. Supreme Court's recent ruling in *Zelman* that religious schools do not have to be excluded, Maine has refused to add the religious option back into the program. IJ represents families in tuitioning towns who have been denied tuition payments because they chose to send their children to religious schools.

This case is in discovery in trial court.

Tuitioning System (Vermont)
Venue: U.S. District Court for Vermont

Similar to the Maine case, this lawsuit, *Genier v. McNulty*, challenges Vermont's refusal to pay tuition to religious schools selected by families in Vermont tuitioning towns. Many school districts in Vermont do not operate their own public high schools and instead pay tuition to schools selected by their students' parents. While the statute does not exclude the option of selecting religious schools, in 1961 the Vermont Supreme Court held the federal Establishment Clause required their exclusion.

In 1999, that Court held that although it was now clear the Establishment Clause does not require the exclusion of religious schools, the Vermont constitution's "compelled support" clause does. IJ represents families in tuitioning towns challenging this holding in federal court, on the basis that it violates the federal Free Exercise of Religion Clause as well as the Free Speech Clause and the Equal Protection Clause.

This case is in discovery at the trial court level.

PROVIDING SUPPORT

Promise Scholarship Program (Washington)
Venue: U.S. Supreme Court

IJ filed an *amicus curiae* brief in the *Locke v. Davey* case, which was decided on February 25, 2004 in favor of Washington State. (See "*Davey* Ruling Leaves Vouchers in Play," page 1.)

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Scholarships

Continued from page 1

tax-credit programs—according to criteria relating to the eligibility of students, the strength of increased purchasing power available through the program, and the eligibility of schools to participate.

In broad terms, the ranking system prizes choice programs with the following features:

- broad over narrow student eligibility pools;
- large or privately set dollar amounts over small or government-capped amounts; and
- few regulations or restrictions on private school participation.

"In all cases, the gold standard used for grading voucher programs reflects Milton Friedman's vision of a system of education where all students, regardless of income or any other criteria, are able to use 100 percent of the state and local funds to attend public and private schools that are largely free from government interference," Enlow writes.

The author is careful to note that all of these programs are improvements over the existing system since they provide more educational freedom. He also recognizes the political realities involved in passing a choice program, most notably that defenders of the status quo constantly push for programs with limited eligibility, small subsidies, and onerous restrictions on private schools as a fallback position from stopping school choice proposals completely.

The results of the ranking are shown in Figure 1. Florida's McKay Scholarship Program ranks as the study's top school choice program, with a grade of A-, and Iowa's Tax Credit program is the lowest-scoring, with a grade of C-.

While the McKay Scholarship Program limits eligibility to students with disabilities attending public schools, this represents an eligibility pool of 350,000 students. McKay Scholarship recipients receive vouchers to attend another public or private school of their choice with a scholarship equivalent to the funds that would have been spent on their education in the public school setting. The combination that puts the McKay program at the top of the rankings is:

- a large eligibility pool;
- vouchers with good purchasing power; and
- relatively light regulations on private schools.

Arizona's Scholarship Tax Credit ranks second. Arizona legislators pioneered the use of an individual scholarship tax credit as a method for creating school choice in 1997. The Arizona legislation created a dollar-for-dollar tax credit for individual donations to private charities providing financial assistance to students attending private schools. Every K-12 student in the state is eligible to receive assistance, with few regulations for private schools.

The Arizona model inspired two later scholarship programs in Pennsylvania (ranked 3rd) and Florida (ranked 7th), both of which created tax credits for corporations making donations to private charities offering tuition assistance to students.

The nation's oldest voucher programs, in Vermont and Maine, rank 4th and 5th respectively. For more than a century, both of these programs have provided vouchers to students in small towns that do not have local public schools for their grade levels. Students may redeem the vouchers at public schools in nearby towns or at nonreligious private schools in state or even out of state. Although the programs impose no academic or income restrictions, both restrict the vouchers to a small number of students. Each program gets a grade of B.

Figure 1: Ranking of School Choice Programs

Rank	State	Program	GPA	Grade
1	Florida	"McKay" Vouchers	3.60	A-
2	Arizona	Tax Credit Vouchers	3.50	A-
3	Pennsylvania	Tax Credit Vouchers	3.33	B+
4	Vermont	Tuitioning	2.97	B
5	Maine	Tuitioning	2.93	B
6	Florida	"Opportunity" Vouchers	2.87	B
7	Colorado	Vouchers	2.73	B-
8	Florida	Tax Credit Scholarships	2.43	C+
9	Illinois	Personal Tax Credit	2.00	C
10	Minnesota	Personal Tax Deduction	2.00	C
11	Wisconsin	Vouchers (Milwaukee)	1.83	C
12	Ohio	Vouchers (Cleveland)	1.80	C-
13	Iowa	Personal Tax Credit	1.77	C-

In results sure to surprise many, the Milwaukee and Cleveland voucher programs ranked relatively low. Such rankings do not detract from the huge roles both programs have played in the modern school choice movement—with the Milwaukee program being the first of the modern era and the Cleveland program cementing the constitutionality of the school voucher concept in the *Zelman* decision. The rankings instead reflect each program's capped subsidy amounts, admission policy restrictions, and limited scope, i.e., aimed at limited populations within a single school district.

"The school choice movement must not shy away from the fact that some voucher and choice programs are better than others," Enlow writes. Some programs are "large, generous, and inclusive," others are "small, stingy, and restrictive."

Matthew Ladner is director of the Center for Economic Prosperity at the Goldwater Institute in Phoenix, Arizona. His email address is **mladner@goldwaterinstitute.org**

INTERNET INFO

Robert C. Enlow's March 2004 report from the Milton and Rose D. Friedman Foundation, "Ranking Vouchers," is available online at **http://www.friedmanfoundation.org/resources/rankings.pdf.**

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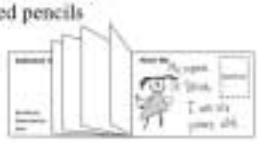

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In Final Analysis, Cleveland Voucher Students Are Just Average

by Krista Kafer

Students who received publicly funded school vouchers through the Cleveland Scholarship and Tutoring Program (CSTP) performed as well academically as their public school counterparts, according to a third analysis of the program, released in December 2003, by the Indiana University School of Education. Although students who left the program and returned to the public schools experienced an initial academic decline, over time their achievement rose to a level comparable to that of the other students.

The report was the final annual report of the longitudinal effects of the school choice program. The research team, led by Kim K. Metcalf, has followed a cohort of scholarship participants and non-participants since 1998, tracking their academic achievement and school experience.

"A safe, orderly environment is the single most important school attribute for families, and the academic quality of the school and its teachers are consistently close behind," the researchers found. Class size, diversity, and extracurricular activities are less important considerations.

Additional costs associated with private school attendance and the limited supply of private schools posed barriers for some families. Other families withdrew from the program or simply did not apply because of legal uncertainty prior to the U.S. Supreme Court's 2002 decision. The court decision heightened parents' awareness of the CSTP programs and the city's charter school, or community school, program.

Enacted in 1995, CSTP provides students in grades K-10 with vouchers worth up to $2,700 for tuition at a private school of choice. Students may also choose to attend another public school or receive tutoring. Currently, about 5,098 students participate in the program.

The new study, "Evaluation of the Cleveland Scholarship and Tutoring Program 1998-2002," examines the characteristics of five groups of students:

- students using the voucher;
- those who applied but did not receive a voucher;
- those who did not apply;
- those who received a voucher but chose not to use it; and
- those who used vouchers for a year or two before returning to the public school system.

Students in the study began as first-graders in 1998 and were in the fourth grade in 2002.

Researchers also collected information about classroom characteristics and teacher experiences. They conducted a separate interview of randomly selected parents of second-, fourth-, and eighth-graders in Cleveland's public and private schools to determine what influences parents' decisions about schooling.

Although the study determined the population of scholarship winners was similar to the public school population, the following points were noted:

- Students using unclaimed lottery scholarships were less likely to be black, making the overall scholarship population less African-American than in the public schools;
- These late-award students were more likely to be from families with higher incomes than the initial lottery winners' families.
- The proportion of Hispanic and multiracial children in the voucher population was twice that of the public school student population.

Classroom characteristics were similar in public and private schools. Each had around 22 students per teacher. Teachers in both types of schools had 12 years of teaching experience and had spent half of their careers at their present school. Public school teachers were slightly more likely to be certified and have completed coursework beyond a master's degree.

One unexpected finding was that students in larger classes had higher achievement. Also, while public school teachers with a higher level of education had higher-achieving students, the opposite occurred in private schools.

Krista Kafer is senior policy analyst for education at The Heritage Foundation. Her email address is **krista.kafer@heritage.org**.

SCHOOL CHOICE WORKS

Not Good Enough... but Not Bad Enough, Either

by M. Royce Van Tassell

D'Keyvius' first progress report—making progress, but reading below grade level—confirmed what Daphne Bills already suspected. While working on reading with her son, she often had to explain things twice, sometimes in a whole different way, before he "got" it. Kindergarten and first grade hadn't been too bad, but she knew D'Keyvius didn't read as well as many of his classmates in the public school in Central Florida.

When she went to his first parent-teacher conference, she asked his teacher whether the school had any remedial classes that might help him catch up. His teacher said the school would test him, and see whether he qualified for these classes.

Comforted, she continued reading with him for 15-20 minutes each night, but he didn't make progress. Reading out loud embarrassed him. He just wasn't getting it. On his second progress report his teacher wrote almost the exact same thing: D'Keyvius was getting along fine, just reading below grade level.

At the next parent-teacher conference, Daphne asked whether the school had tested him for placement in the school's remedial classes. This time she learned the testing coordinator was at his school only one or two days per week, and D'Keyvius just hadn't been scheduled yet. Not to worry, though, they said, he will be tested.

Nevertheless, her worries mounted. "If he isn't enjoying school now, what am I going to do when he gets to high school?" she wondered. His Dad, Cedrick, hadn't finished school, and had ended up dead—murdered—just a few years after D'Keyvius was born. That prospect was not what she wanted for her son.

After the third progress report repeated the refrain of the first two, Daphne received a letter from the school asking her to come in and discuss whether D'Keyvius was ready for third grade. At the meeting his teacher said the testing coordinator had finally tested him; however, he didn't qualify for remedial classes. He had done too well.

"[W]hen a co-worker mentioned that D'Keyvius could attend another school in her district, she decided he wasn't going back to his old school."

Daphne just started to cry.

"I been telling you this for the whole year," she said. "Why didn't you test him earlier, when he could'a gotten help?" She asked whether he could go to summer school, but his school didn't have it, and his district wouldn't let him attend summer school at another school.

The decision to hold him back in second grade was hers, but she felt the school had failed him. Then, when a co-worker mentioned that D'Keyvius could attend another school in her district, she decided he wasn't going back to his old school.

While looking at other public schools, she read about scholarships from Children First Central Florida. Although time was running out, she applied for a scholarship, D'Keyvius qualified, and he and his sister Makayla enrolled at St. Mark's Elementary School.

Daphne now gets progress reports every four weeks, and a report card every nine weeks. St. Mark's also has a Sylvan reading tutor work with D'Keyvius twice a week, even though tuition is just $3,600 per student per year—compared to a cost of more than $5,800 per student in Florida's public schools. Every student at St. Mark's—not just the worst off—gets the help they need.

Now D'Keyvius is excited about school. He wants to show his Mom how well he's doing. Which is exactly the attitude he needs now, because it won't be like that in high school.

Royce Van Tassell is executive director of Education Excellence Utah. His email address is **royce@edexutah.org**.

INTERNET INFO

The December 2003 report from Indiana University School of Education, "Evaluation of the Cleveland Scholarship and Tutoring Program 1998-2002," is available online at **http://www.indiana.edu/~iuice/rprt_rqs.html**.

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Alex Cranberg

Fighting to Protect the Greatest Gift: Better Educational Opportunities for Children

by Robert Fanger

It's midwinter when the Grinch steals Christmas in the Dr. Seuss children's story, but it was midsummer in 2003 when not one but six bright green Grinches appeared outside the teacher union building in Denver, Colorado after the Colorado Education Association filed suit against the state's new voucher program. The school choice advocates inside the furry costumes were making the point that the teacher union was stealing educational opportunities from children.

"Our Grinches were steaming hot in their full-body costumes, but not as steaming hot as the union wardheelers," said Alex Cranberg, chairman of the Alliance for Choice in Education (ACE), which organized what has come to be known as the "Grinch Patrol." The Grinches have dropped in on numerous teacher union press conferences, stealing a bit of the spotlight each time.

The opponents of school choice are very well-funded, notes Cranberg, but he views their approach as a narrow, top-down effort more oriented toward movie set battles. He believes parental choice advocates could win on a regular basis if the movement were better funded.

While the Grinches draw attention to how teacher unions fight against school choice, ACE and other groups fighting *for* school choice are attracting their own spotlight. That spotlight became more intense when District Court Judge Joseph E. Meyer III ruled against the Colorado Opportunity Contract Pilot Program in December 2003.

In January, a *Denver Post* editorial suggested a response to the ruling: Lawmakers could pass a bill assigning only state funds to private school vouchers; the suspended program also used local property taxes. Under the *Post*'s proposal, the state would provide the majority of the funds but might call on groups such as ACE to "backfill the money needed for some kids to attend the private school of their choice."

This is a challenge that speaks to Cranberg. ACE is a nonprofit organization that provides scholarships to low-income children in an effort to provide more families with the ability to choose the school they believe will best educate their child. Currently, about 780 children are receiving ACE scholarships, with over 1,200 awarded to date.

"There is always some way around the obstacles put in our way," commented Cranberg.

Before Meyer's decision, Colorado was running ahead of most states in the movement toward greater educational freedom. It was the first state to implement a school voucher program after the U.S. Supreme Court upheld the Cleveland program, and the 11th state overall to institute a school voucher program.

Despite Colorado's forward position, Cranberg still believes the state of school reform is far behind what it should be. He attributes this partly to organization and funding but also to people not applying the same rules to public schools that they apply to other aspects of their lives.

> **"It is amazing to me how many normally thoughtful citizens check their economic literacy at the door when it comes to education."**

"It is amazing to me how many normally thoughtful citizens check their economic literacy at the door when it comes to education," he said.

What Cranberg sees as the next step in achieving change is a substantial effort to recruit and empower new allies for school choice. This would involve recruiting the best people, organizing efforts on a neighborhood basis, and seeking the support of various community organizations and media—much like a political campaign.

"Political activism is essential to support policy activism," said Cranberg.

Robert Fanger is the media relations and communications associate with the Milton and Rose D. Friedman Foundation in Indianapolis, Indiana. His email address is **Robert@FriedmanFoundation.org**.

School Choice Roundup

by Robert Fanger

ALASKA

Pilot Voucher Program Proposed

Alaska State Rep. Vic Kohring (R-Wasilla) offered an education funding proposal that included a voucher plan at a town meeting in Anchorage with about 50 residents from the Matanuska-Susitna Borough.

The voucher plan would be a pilot school program with a five-year sunset. Other items in Kohring's plan included adding $40 million to the education budget and consolidating districts of 500 students or less.

Education funding initiatives are being discussed because of budget crunches in the state's largest school districts. School officials say state per-student funding has not kept up with inflation and the budget for federal testing requirements is underfunded.

Fairbanks Daily News
February 15, 2004

ARIZONA

Senate Committee Rejects Universal Vouchers

By a vote of 5-3, the Arizona Senate Education Committee rejected a voucher measure that would have allowed students, regardless of economic standing, to use 80 percent of the state's annual per-pupil spending to attend the school of their choice.

The bill would have permitted all Arizona residents to use the voucher—worth $3,200—to send their children to a private school. If any money remained after enrollment, it could be used by parents to offset the costs of college tuition. The program would have been phased in over a five-year period, and by 2006 all students attending Arizona's private schools would have been eligible.

Tim Hogan of the Arizona Center for Law in the Public Interest told the *Arizona Republic* the universal qualities of the bill seem to indicate lawmakers have been emboldened by the 2002 U.S. Supreme Court decision on Cleveland vouchers.

The bill's principal author, Sen. Thayer Verschoor (R-Gilbert), explained his theory: The tuition gift would encourage parents to move their children out of public schools into private schools. For every child who entered private school, the state would save money because $3,200 is 80 percent of the average amount the state spends to educate a child. The state would break even when 85,000 public school students moved to private schools, making up for the $128 million the state would spend on the approximately 40,000 children already in private schools.

Verschoor told the *Arizona Republic* that eligibility requirements, such as income restrictions or restricting participation to students who attend failing schools, is "discrimination" against wealthy people.

"School choice should be universal," he said.

Arizona Republic
February 14, 2004
February 16, 2004

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CONNECTICUT

Gov. Rowland Announces Voucher Plan

In his annual budget speech on February 4, Connecticut Gov. John G. Rowland announced his plan to provide vouchers worth $4,000 to 500 students in the state's lowest-performing schools.

The proposal requires the state to provide $3,000 of the voucher amount, while the local district would be responsible for the remaining $1,000. Rowland plans to allocate an extra $20 million in his budget for the plan and creation and expansion of other education programs.

"We're not taking any money away," Rowland told the *Hartford Courant*. "The key here is not to create winners and losers."

The proposal would apply to students in 42 schools that have failed to meet the requirements in reading and math set by the No Child Left Behind Act. If more than 500 students apply for the vouchers, a lottery system would be used to choose participants.

Hartford Courant
February 3, 2004

INDIANA

Study Shows Significant Support for Vouchers

In January, Indiana University's Center for Evaluation and Education Policy released a public opinion survey gauging public sentiment in the state on several education issues, including support for school vouchers.

The research found:

- 57 percent of respondents who had knowledge of vouchers support the idea of using them to give parents a choice in their child's education;
- 80 percent believe if school fails to meet state standards parents should be able to send their children to another public school;
- 54 percent of respondents with knowledge of charter schools support the creation of charter schools.

"We look at this as saying there is a large group of people unaware of the issue, and the more we make them aware, the more they favor the issue of school choice," Robert Enlow, executive director of the Milton and Rose Friedman Foundation, told the *Indianapolis Star*.

"We think there is a good reason for choice," said Duncan Pat Pritchett, superintendent of Indianapolis Public Schools. "But it's not the silver bullet that should solve all problems."

Indianapolis Star
February 9, 2004

NEW HAMPSHIRE

Slim Loss for Vouchers

On February 5, the New Hampshire House of Representatives missed approving the state's first voucher program by one vote.

HB 1353, rejected 172-171, would have allowed families of four making up to $73,000 a year to qualify for the program. The value of the voucher could not exceed 80 percent of the state adequacy grant received by the school for each student.

"It's a sad day for the children and parents at the lower end of the income scale who will be prevented for at least another year from choosing education," Rep. David Scott (R-Dover) told *Foster's Daily Democrat*. "The good news is we only lost by one vote, which shows the momentum is growing. That bill in study will provide the framework for the future."

Just a few weeks earlier, the House assigned a bill similar to HB 1353 for interim study in the Education Committee.

Foster's Daily Democrat
February 6, 2004

SOUTH CAROLINA

Majority of Voters Support Tax Credit Plan

A February survey of registered voters in South Carolina found 62 percent support the basic concept of a tax credit plan that would allow middle- and lower-income families the opportunity to decide where their children should be educated.

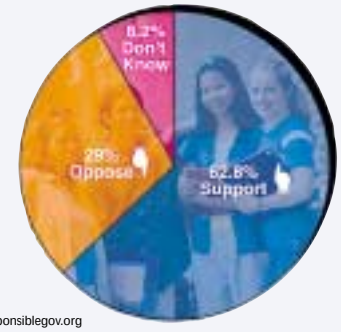
The study, conducted by South Carolinians for Responsible Government (SCRG), also found an overwhelming majority of South Carolina voters want more options. Of those surveyed, 80 percent feel parents, not the state or local government, should make basic decisions on which school and what kind of school a child attends.

"Our state is ready for education reform," said SCRG President Tom Swatzel. "This poll clearly shows South Carolinians value parental control of education and want a larger say in how their children are educated. School choice will make both of these ideals central to our education system."

The poll, conducted by Wilson Research Strategies in December 2003, was a telephone survey of 500 registered voters in South Carolina representing all parts of the state and various economic backgrounds, household demographics, and political affiliations. The study has a margin of error of +/-4.0 percent.

South Carolinians for Responsible Government
http://www.scresponsiblegov.org
February 12, 2004

Would you support/oppose a new law that would give individuals and businesses a credit on either their property or their state income taxes for contributions that help parents send their children to the school of their choice (including public, private or religious)?



Source:
www.scresponsiblegov.org

UTAH

Plan to Reintroduce Tuition Tax Credits

Utah State Rep. Jim Ferrin (R-Orem) plans to introduce another tuition tax credit bill similar to one that stalled in the House last year.

The new bill would include making the $2,000 tax credit amount available to all students, regardless of family tax liability. Also, it would make the tax credit available to individuals who donate money to private school scholarships for low-income children.

Another proposed bill, from Rep. Marda Dillree (R-Farmington), would make it easier for new charter schools to be approved. The bill would create the state's 41st school district as a statewide district made up of just charter schools. The school board for the district would have the authority to approve new charter schools.

"I'd like to see some options created," Layton parent Rebecca Farraway told the *Salt Lake City Tribune*. Farraway hopes to open a new charter school.

"I really believe parents have grown passive, and they don't realize the obligation they have to demand the best education for their children," she added. "I think parents have grown to trust the public school system to do its job."

Salt Lake City Tribune
January 19, 2004

VERMONT

Testimonies for Choice Outnumber Opposing Views

On February 11, the Vermont House Education Committee began drafting a school choice bill and heard testimony from 41 people on the topic. Of those who spoke, 31 supported choice, 6 opposed it, and 4 were undecided.

Any choice legislation would use as a starting point a bill previously introduced by Committee Chairman Howard Crawford (R-Burke). Crawford's bill would allow students to attend any public school in Vermont but would limit the number of students leaving the school to 5 percent of the student body. If there were more applicants to a school than available spaces, a lottery would be held to assign seats.

For students who choose to attend another public school, the voucher value would be equal to the state funding level, which is currently $6,800. For students choosing to attend a private school, their parents would receive a voucher worth $5,000 per year for grades 9-12 and $2,500 per year for grades K-8.

Vermont Governor James Douglas has said he considers enacting a public school choice plan a top priority this year.

Rutland Herald
February 11, 2004

WISCONSIN

Poll Shows Support for Lifting Enrollment Cap

Wisconsin state officials report 154 schools have applied to participate in the Milwaukee Parental Choice Program, a significant increase over the current 106 participating schools. With 13,260 students now enrolled, some worry the program could soon hit its enrollment cap of 15,000.

"I think this confirms what DPI [Department of Public Instruction] has concluded, that within a year or two the cap is going to be busted," education consultant George Mitchell told the *Milwaukee Journal-Sentinel*. "A lot of these schools may be trying to get a seat at the table before the cap is hit."

A recent telephone poll may add fuel to the discussion on expanding the program. The survey, financed by several school choice groups, polled 15,000 voting households and found 51 percent of Milwaukee residents would like to see the enrollment cap lifted. Only 29 percent were against lifting the cap.

The Milwaukee Parental Choice Program allows children from low-income families to attend private schools using state-funded tuition vouchers. The cap is currently set at 15 percent of the enrollment in the Milwaukee Public Schools.

Milwaukee Journal Sentinel
February 10, 2004
February 17, 2004

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Does Government Funding = Government Control?

by David W. Kirkpatrick

A major concern about public funding of school choice is government control of private schools. "Who pays the piper calls the tune," the argument goes.

For example, in higher education, college students receiving assistance under the federal Basic Educational Opportunity Grants program (BEOG) subject the college to the provisions of Title IX, which bars sex discrimination by institutions receiving "federal financial assistance." The U.S. Supreme Court so ruled in *Grove City College v. Bell* in 1984.

While *Grove City* is accepted by many as proof that government funding leads to government control, a different perspective was provided by the late William Bentley Ball, an expert on this subject who argued 10 cases before the U.S. Supreme Court.

"[I]n enacting the BEOG program," explained Ball, "[Congress] had expressly declared that a specific purpose of the BEOGs was in fact to 'provide assistance to *institutions* of higher education.' Further, the Court said that Congress had specifically intended Title IX requirements to be closely tied to the BEOG statute."

Thus, the Court did not hold that government-funded student aid justifies government regulations, but said this particular form of aid was meant for *institutions*.

In fact, higher education is much *less* regulated than are the public schools, even though there is no constitutional or other restriction on implementing state controls. For example:

- the curriculum is not mandated;
- the faculty need not be certified;
- there is no specified length of school year, such as 180 days; and,
- there is no specified five-hour instructional day.

If government funding means government regulation, why aren't mandates established in higher education similar to those in K-12 education?

It is because higher education is based on personal choice. The millions of full- or part-time college and university students are not assigned to the school they attend, nor are they required to remain there. If undergraduates find their institution of higher learning unsatisfactory for any reason, they may leave at any time, taking their money with them. Government controls are not needed to ensure colleges and universities are operating satisfactorily.

By contrast, government heavily regulates the public school system because most students are assigned to the schools they attend and have few opportunities to go elsewhere. When government spends billions of dollars on the system of K-12 schooling, it must regulate schools because citizens can't.

These regulations would not be needed if parents could send their children—and their education funds—to a school of their choice, similar to the way higher education works.

Further, government regulation of schools is not dependent on the government providing funding. In its 1925 *Pierce* decision, a unanimous U.S. Supreme Court declared, "The child is not the mere creature of the State," and ruled that no child in this nation can be compelled to attend a public school.

However, in a less well-known part of the *Pierce* ruling, the Court said government can establish reasonable regulations for all schools and prohibit or abolish any schools that are harmful to the public interest. It is unlikely any government could or would permit anyone to do whatever they wish regarding their children's education.

The form of government funding that would involve the least amount of government control already exists as the 60-year-old G.I. Bill. A similar student voucher program, in which schools are directly accountable to those they serve, would provide accountability that works and weaken, not strengthen, the need for government controls.

David W. Kirkpatrick is a Senior Education Fellow with the U.S. Freedom Foundation and also with the Buckeye Institute in Columbus, Ohio. His email address is **kirkdw@aol.com**.

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New Hampshire Communities Could Save $8 Million with Vouchers

by Robert C. Enlow

While the national debate rages over the potential fiscal impact of school vouchers, a new study indicates that, at least in the state of New Hampshire, vouchers could save local communities more than $8.7 million each year.

That's the conclusion reached by economist Brian J. Gottlob of PolEcon Research in "The Fiscal Impacts of School Choice in New Hampshire," a study released in February and published jointly by The Josiah Bartlett Center for Public Policy and the Milton and Rose D. Friedman Foundation.

As a model, Gottlob uses a voucher program introduced during the 2003 New Hampshire legislative session that would have allowed up to 2,000 students annually to attend private schools. The program is similar to one that was narrowly defeated in the New Hampshire House of Representatives in January 2004.

The study analyzes the financial impact the 2003 proposed voucher program would have on each school district, the impact on total state aid to education, how school district costs would change in response to vouchers, and how private school attendance would affect local taxation and expenditures.

Impact on Local Communities

In evaluating the financial impact of vouchers on school districts in New Hampshire, the study finds no local community would suffer a net loss of funds as a result of the introduction of the model choice program.

"The detailed analysis by Brian Gottlob shows that a statewide choice program won't hurt schools financially," said Charlie Arlinghaus, president of The Josiah Bartlett Center. "Local schools would receive more money to educate fewer students."

"For every 10 percent increase in the percentage of a community's children enrolled in private schools, total education expenditures are 1.75 percent lower and local education tax rates are 1.5 percent lower."

Because the voucher amount is less than the variable cost associated with educating each student, the study concludes, "a school choice program cannot financially impair school districts."

According to Gottlob's analysis, school choice would result in 2,000 fewer students in government schools in New Hampshire, reducing 2004 state adequacy grants to communities by $4.9 million. However, with fewer students to serve, communities would have avoided costs of $13.7 million. The net impact on communities would be a benefit of $8.8 million.

Variable Costs

A common argument against school choice is that even if children use vouchers to exit the public schools and attend private schools, the costs would remain the same for public schools. In essence, this argument treats all public school costs as fixed costs.

To examine the validity of this claim, the study used data from school district financial reports and found the variable cost to educate each elementary and secondary student falls "in a range between $5,900 and $7,200, or between 73 percent and 87 percent of total elementary expenditures." Public school fixed costs are between 13 and 27 percent of total costs, the study found.

The amount of the voucher under consideration in New Hampshire was $2,700, well within the public schools' variable cost per student.

Private School Attendance and Tax Rates

In addition to the cost savings from vouchers and the identification of variable versus fixed costs, the study suggests that as the percentage of students in private schools in a community increases, education expenditures and tax rates decline. For every 10 percent increase in the percentage of a community's children enrolled in private schools, total education expenditures are 1.75 percent lower and local education tax rates are 1.5 percent lower.

The study estimates that by 2010, the school choice program would result in education expenditures 8.5 percent lower and local education tax rates 7.2 percent lower than they would have been in the absence of school choice. Private school attendance rates would rise from 11 percent to 16 percent.

Although school choice is more about getting the best education for children, "the study will be a helpful tool to dispel the myth that vouchers drain money from public schools," said school choice activist Kathy Getchell, director of the School Choice Center: New Hampshire.

Robert C. Enlow is executive director of the Milton and Rose D. Friedman Foundation in Indianapolis, Indiana. His email address is **rcenlow@friedmanfoundation.org**.

INTERNET INFO

The February 2004 study by Brian J. Gottlob, "The Fiscal Impacts of School Choice in New Hampshire," is available online at **http://www.jbartlett.org/pdf/NHChoiceV0020204.pdf** and **http://www.friedmanfoundation.org/NHstudy.pdf**.

Manuscript Editor for Education Journal

Education Next: A Journal of Opinion and Research seeks a **manuscript editor**. *Education Next*, published by the Hoover Institution at Stanford University, is a quarterly journal specializing in education policy. The journal may be seen online at www.educationnext.org. The position will be available beginning **June 1, 2004**. The manuscript editor will work with the editor-in-chief, senior editor, two executive editors, research editor, managing editor, copy editor and proof reader.

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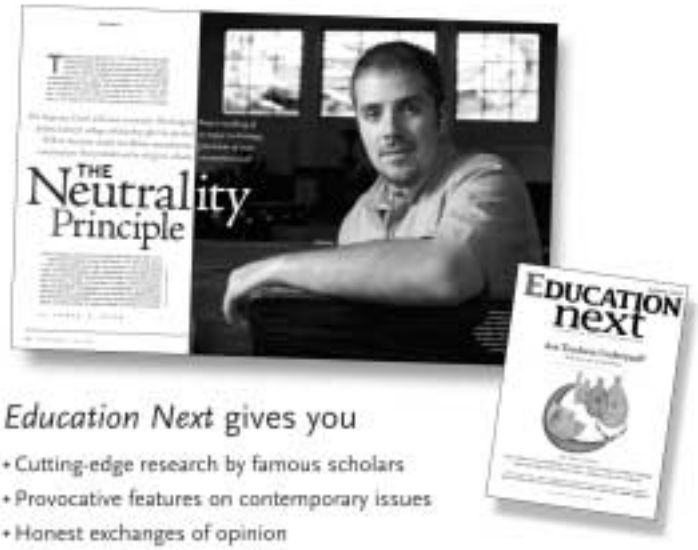

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Empowering the Hispanic Community with School Choice

an interview with Rebeca Nieves Huffman
by George A. Clowes

Established as a nation dedicated to the proposition that all men are created equal, the United States of America has been a magnet for immigrants seeking to better their lives and provide their children with their own shot at the American Dream. But many of today's immigrants—particularly Latinos—are finding the urban public schools their children attend leave them woefully unprepared for life and work in a competitive economy.

Fortunately for Rebeca Nieves Huffman, her Puerto Rican parents saw the public school problem early enough to take action and were willing to make the financial sacrifice necessary to send three children to private school. Although Huffman's brother was initially sent to the local public school on Chicago's Northwest side, he was quickly placed in a private school after some of his classmates held him up at gunpoint.

Huffman was the only one in her community to go to private school. When she graduated from high school, only a handful of her peers from the neighborhood graduated from public school. Many of the others were in jail, pregnant, or jobless, living at home with their parents. Huffman went on to earn a degree in marketing and public relations from Columbia College.

"I was the first one in my family to graduate from college and I was the only one in my neighborhood to graduate from college," she said.

For a number of years, Huffman served as Associate Director of Recruitment and Selection for the Knowledge Is Power Program (KIPP). She also served as Project Leader at City Year, an AmeriCorps program to support young adults who commit to full-time community service. In 2002, through her association with KIPP, she became a board member of the Hispanic Council for Reform and Educational Options (CREO). She was named president of the organization last year, when CREO formally announced its mission at the National Press Club in Washington, DC. Huffman recently spoke with *School Reform News* Managing Editor George Clowes.

Clowes: *How did you become involved in school reform?*
Huffman: When I graduated from college I decided to be a teacher because I loved working with children and I wanted to make an impact on inner city education. I taught transitional third-graders who were repeating that grade for the first or second time in a public school on the West side of Chicago. I saw how frustrated everybody was with the system of public education and how it was administered. Teachers came into their jobs at first idealistic and at the end just burnt out and frustrated, and taking that out on the children.

There was a teacher in our school who treated her students badly and had a track record of academic failure in her classroom. I would go to the principal about her and the principal would pull out a very long, thick file and say, "This is what I've been having to deal with in order to either get her transferred or to fire her. I'm dealing with the union." My principal also was frustrated by the bureaucracy and complained about having to ask permission from the district to move money around in her budget.

That was not what I envisioned for my career. I wanted to impact public education, but I could see nothing could be done at the micro level. Since I had a degree in marketing and public relations, I decided to try out that area and got a job with a Latino advertising agency. I really enjoyed it, I learned a lot, I gained a lot of experience, but I missed making an impact on education.

"I saw how frustrated everybody was with the system of public education and how it was administered. Teachers came into their jobs at first idealistic and at the end just burnt out and frustrated, and taking that out on the children."

Then I was introduced to KIPP, the Knowledge Is Power Program, and went to work there. They have 32 schools nationwide, with a fellowship program—a certification process, if you will—to train potential KIPP school leaders. My role was recruiting educators to start their own KIPP schools. I loved working there because KIPP didn't make excuses for why their students couldn't learn at high levels. The KIPP students were excelling academically and socially, and they were getting accepted in top-notch high schools throughout the country. I'm really proud to have worked with them.

During my time at KIPP, one of my colleagues—a founding board member of BAEO, the Black Alliance for Educational Options—introduced me to Robert Aguirre, the chairman of the board of Hispanic CREO. Subsequently, I became a board member of Hispanic CREO and then transitioned over to the presidency.

Clowes: *What is Hispanic CREO and what is its aim?*
Huffman: Hispanic CREO is an acronym for our full name, the Hispanic Council for Reform and Educational Options, but *creo* in Spanish means "I believe." We are a national nonprofit organization, based in Washington, DC. We're dedicated to improving the educational outcomes of Latino children by empowering their parents with educational choice, with school choice.

We do two things to achieve that: At the national level we inform the public about the crisis that exists in Latino education; and at the grassroots level we educate and empower Latino parents about what their options are. If they don't have many options, we encourage them to become a voice in the community to demand choice.

CREO was formed in the fall of 2000 when a group of about 15 concerned Latino professionals from across the country gathered in Atlanta, Georgia to talk about the findings of the 2000 Census with regard to Latino education. The statistics were really, really grim. Only 52 percent of the nation's Latinos graduate from high school and only 5.2 percent receive a Bachelor's Degree. When you consider that 93 percent of Latinos participate in the system of public education in this country, it just points out how the system has failed us. There are some wonderful public schools out there but they're usually not in the *barrio*.

Even so, at the top of the list of educational options that we support are traditional public schools. If tomor-

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row school choice were to be made available nationwide the way it is, for instance, in Milwaukee, it would mean nothing if there weren't also strong public schools available to receive children. We believe that providing educational choice for parents will help improve the system of public schools.

Last fall, the U.S. Department of Education awarded CREO a grant of $500,000 to educate Latino parents in five major cities about the school choice provision and the supplemental services provision of No Child Left Behind. Three of the cities are in Texas—San Antonio, Austin, and Dallas—plus Camden, New Jersey, and Miami, Florida.

We have been shocked to find there's no awareness of these options among Latino parents. Most have not even heard the term, "No Child Left Behind." What we're finding is that the school districts are not informing parents about their options. In Camden, parents with children in a school on the "Needs Improvement" or "Persistently Dangerous" list are being denied the option of transferring to another school. We've seen situations where principals of these schools have sent letters home to parents saying, "There is no transfer option available to you." Parents' rights are being violated, point blank. There's no pretty way to say it. The door of opportunity is being shut in children's faces.

When we inform Latino parents about the school choice and tutoring options of No Child Left Behind, the response has been unbelievable. In Dallas, for instance, we're averaging 70 parents a week at our meetings. Just a few weeks ago we were on *Despierta America*—which is the equivalent of *Good Morning America*—and we had to assign a 1-800 helpline for the response we received. We went on the show to tell parents about how they can transfer their child and how they can get free tutoring. Parents were calling and literally crying, saying, "I want to transfer my child to a better public school. Please give me more information."

The success of No Child Left Behind depends on how well the school districts cooperate. That is what will determine the success of its implementation. We are trying to make parents aware of what is available to them but we need the cooperation of the districts. We're seeing some positive headway, for instance, in Dallas, where the superintendent is allowing us to go into the "Needs Improvement" schools.

We're telling the school districts, "We're not here to compete. We're here to increase your Latino parent involvement." In fact, a lot of school districts call us to ask how they can increase Latino parent involvement. My first question is always, "Are you sending information home in Spanish?" Most of the time, the answer is "No."

Clowes: *What prompted you to back parental choice as a means of improving public schools?*
Huffman: It's an immediate solution. With school choice, parents don't have to wait for the public schools to get better or for the public schools to get more money. The opponents of choice say, "Our schools are under-resourced. We've got to put more money into public schools." That tells a desperate parent they have to wait. Yet I have seen under-resourced private and charter schools do more with the same children the public schools get. That's no excuse. We can't wait for the public schools to get better. There's a crisis at hand. Our parents need an immediate way to get their children out of schools that are not serving them. This is their life, this is their future that's at risk.

If the Latino community continues to grow the way it did from 1990 to 2000, by the year 2010 we will be the largest ethnic group in the country. There are serious social ramifications of having a group of that size if it is not educationally prepared to participate in a positive way within the society. We're trying to infuse our message with a sense of urgency because the Latino educational crisis needs to be addressed immediately.

Clowes: *One of the concerns you've voiced is the low expectations that public schools have for Hispanic children.*
Huffman: Low expectations is what's stopping our public schools from doing well. From my own experience as an educator and with KIPP, I believe low expectations is a cancer that has spread across our education system. There are educators out there who believe Latino children can't learn at the same level as their white counterparts. They're wrong.

"Hispanic CREO is ... dedicated to improving the educational outcomes of Latino children by empowering their parents with educational choice, with school choice."

There are teachers that are trying to make a difference in their classrooms in the public schools but they are in a minority. I saw it all the time when I was recruiting educators for the KIPP School Leadership Program. They were very frustrated with seeing their students do well in their class but then flop when they went into a different class in the same school.

I believe there are two sleeping giants in the school choice movement: Parents and teachers. There are a lot of great teachers whose hearts are in the right place, and they're trying their hardest, but they keep on bumping their heads against the bureaucracy of the public education system. Choice opponents say we're anti-public schools, that we just want to privatize the system, but that's not the case. There are plenty of great teachers in the system, but they can't be effective as long as they're in a school culture of low expectations.

Jay Matthews from the *Washington Post* recently did an article about No Child Left Behind, and he requested some additional information from parents, including a group of parents from our Dallas chapter. One of our parents wrote, "Even though the school district is telling me that my daughter is doing well, I know she is not doing well. She was tested at an academy school, and they told me her reading and math were below grade level. But the public school tells me she's doing fine." There is no reason why a child should be told they're doing fine when in fact they're not. That's just one of the many examples of the low expectations that I have observed in the system of public education.

Clowes: *What would be your practical advice for parents who are worried that their children aren't getting a good education at their assigned school?*
Huffman: There are some cultural issues in the Latino community that we have to face when we're doing our grassroots projects. One is that Latino parents, especially immigrant parents from other countries, generally don't want—or dare—to question the system. They say, "I don't have a Bachelor's Degree. The teachers and principal must know what they're doing." There's also this fear that if they question the system, which represents the government, they might get deported. They've worked so hard to come to this country and they don't want to lose it.

We tell them, "You're protected by the law and your child is protected by the law. You can go to the school and ask questions. You can talk to the teacher and ask questions." If they're trying to get something done at their public school, we encourage them to reach out to a local, community-based organization like Hispanic CREO. If they find there are no options available for their child, we encourage them to become an advocate for their child. They then become a part of the process of influencing policy-makers. It has nothing to do with Democrats or Republicans, it simply has to do with the educational success of their child.

What we find is that when parents first come in, they don't want to rock the boat. But when they have been informed about how the system works and how they can become a voice, they turn into what we call "Ninja Moms." They're ferocious. They go to the state capital and they ask legislators, "Where do you send your child to school?" That's why I say parents are really sleeping giants.

Nobody wants what's best for their child more than a parent, and once parents are activated on the issue, they become unstoppable. That's what we're finding, for instance, in San Antonio, where there is a large network of about 3,000 parents called *Los Colmadres*. Directly translated, *Los Colmadres* means "The Godmothers." They have very little money in their budget for parent activities but they are actively engaged in improving the schools in their community. That's a really powerful thing to see and experience.

Clowes: *How does Hispanic CREO regard bilingual education?*
Huffman: As an organization, we don't have a stand on bilingual education because our focus is laser-like on school choice options. But in our grassroots projects we inform Latino parents about what bilingual education is and what other programs such as dual-language programs are.

For the most part, we find parents say, "I don't want my child being taught in Spanish all day. I want them immersed in the English language." Many informed parents choose programs other than bilingual education. However, Hispanic CREO as an organization doesn't take a stand on that. We inform parents about the different programs and we let them choose. It's all about informing and empowering parents so they can choose what's best for their child.

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IT CEOs Call for More Rigorous K-12 Education

by George A. Clowes

The U.S. public education system is not preparing future workers with the education and skills they need to make effective contributions in the workplace, according to the Computer Systems Policy Project (CSPP), a group of chief executives from the nation's leading high-technology companies. The U.S. economy is expected to create an estimated 19.3 million new high-skilled jobs by the year 2020.

"[D]espite decades of talk, countless reports, and sweeping policy initiatives, CEOs in the IT industry, and in other industries as well, believe that the U.S. public education system remains the nation's biggest competitive *disadvantage*," declared a new CSPP report released on January 7, titled, "Choose to Compete: How Innovation, Investment and Productivity Can Grow U.S. Jobs and Ensure American Competitiveness in the 21st Century."

Among the report's education policy recommendations are specific steps for improving teacher preparation and performance:

■ Ensure that entry-level teachers are well trained in both content and teaching strategies.

■ Provide pay differentials and more flexible certification requirements to draw more and better-trained teachers from the ranks of professionals to new career opportunities.

■ Improve the working environment for all teachers to make the profession more attractive.

■ Provide opportunities and incentives for teachers to pursue intensive, content-based professional development.

"[D]espite decades of talk, countless reports, and sweeping policy initiatives, CEOs in the IT industry, and in other industries as well, believe that the U.S. public education system remains the nation's biggest competitive *disadvantage*."

COMPUTER SYSTEMS POLICY PROJECT

"As the world's literacy rates skyrocket and as other countries compete head-to-head with highly educated and technically skilled workers, tomorrow's good jobs are up for grabs," noted the report, while warning many millions of Americans don't have the skills needed to land those jobs:

■ students who drop out of school with limited skills and no prospects for employment;

■ students who graduate from high school but lack basic reading, writing, and mathematics skills;

■ college graduates without basic competencies in mathematics, science, and engineering.

"Americans who think that foreign workers are no match for U.S. workers in knowledge, skills, and creativity are mistaken," stated the report, pointing out that students in Asian nations perform much better than U.S. students in international comparisons of math and science ability, such as the Third International Math and Science Study.

Other countries also are producing far more engineers than the United States, which accounts for only about 7 percent of the bachelor-level engineering degrees granted worldwide. For example, the United States awarded about 61,000 bachelor-level engineering degrees in 1999, while Japan awarded more than 103,000, the European Union awarded more than 134,000, and China awarded more than 195,000.

CSPP member Carly Fiorina, chairman and CEO of Hewlett-Packard, has suggested that the greater long-term threat to the U.S. economy was not low-cost unskilled labor in China, India, or Russia, but well-educated labor in those countries.

"As a nation we must renew our investment in competitiveness, just as businesses must do," she said.

To prepare American students for entry into tomorrow's high-tech job market, the CSPP report calls for "a rigorous education in core academics and 21st-century skills." To empower American workers to handle the dislocations that occur in a dynamic job market, the report calls for the development of a training infrastructure where they can acquire new skills and change careers.

As well as the call for improved teacher preparation and performance, the report's preliminary recommendations for policymakers and business people include the following:

■ Fund federal and state education priorities, focusing on improvements to raise student achievement.

■ Enact a Mathematics and Science Improvement Act of 2004, with a focus on developing more rigorous expectations in math and science.

■ Create an incentive for employers to invest in human capital through training and hiring of highly skilled workers.

"As the U.S. encounters new global realities policy makers face a choice: we can compete in the international arena or we can retreat."
CRAIG BARRETT
CEO, INTEL CORPORATION

"As the U.S. encounters new global realities policy makers face a choice: we can compete in the international arena or we can retreat," said Craig Barrett, CEO of Intel Corporation and chairman of CSPP. "America can only grow jobs and improve its competitiveness by choosing to compete globally, and that will require renewed focus on innovation, education and investment."

Founded 15 years ago, CSPP is the information technology industry's leading advocacy organization. The CSPP CEOs meet with lawmakers in Washington twice annually to discuss issues of importance to the high-tech industry including trade, digital rights management, and privacy. CSPP's January report calls for establishing new policy priorities to increase U.S. growth and competitiveness, ensure continued technology leadership by the U.S., and help create new American jobs.

George A. Clowes is managing editor of School Reform News. *His email address is* **clowes@heartland.org**.

INTERNET INFO

The January 2004 report of the Computer Systems Policy Project, "Choose to Compete," is available online at **http://www.cspp.org/reports/ChooseToCompete.pdf**.

AI Science Tutors Never Get Tired

No matter how many times a student asks a Quantum Tutor to go over a chemistry or physical science problem, the tireless tutor won't get frustrated or irritated about having to explain the material all over again. That's because the nine Quantum Tutors available from Holt, Rinehart and Winston are Artificial Intelligence Tutors, the latest three being released in January.

"These new Quantum Tutors will give teachers another level of learning support to help students with difficult concepts in chemistry and physical science," said Judy Fowler, Holt president.

For students who need personal coaching to develop a better grasp of complex science concepts and for teachers, the Tutors provide an on-demand, Web-based educational resource that may be used in class, in the computer lab, or at home at any time.

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The Quantum Tutors address complex science topics and complement the lessons in *Holt Chemistry*, *Holt Modern Chemistry*, and *Holt Science Spectrum Physical Science*, as well as *Holt Professional Development* for teachers. The nine Tutors are Stoichiometry, Chemical Reactions, Chemical Bonding, Elements, Ionic Compound Formulas, Mathematics of Chemical Formulas, Measurement, Equation Balancing, and Oxidation Numbers.

Holt, Rinehart and Winston is a leading publisher of textbooks and educational materials for grades six through 12 and is part of Harcourt Education, a global education provider serving students and teachers in Pre-K through grade 12, adult learners, and readers of all ages. Quantum Simulations, Inc. is a business-to-business provider of artificial intelligence tutoring engines that power existing software, hardware, and distance learning products.

— *G.C.*

INTERNET INFO

Further information on Quantum Simulations, Inc.'s Artificial Intelligence Tutors is available online at **http://www.quantumsimulations.com/home.html**.

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JUST THE FACTS

U.S. Science Achievement

For more than three decades, the long-term trend studies of the National Assessment of Educational Progress (NAEP) have tracked how well U.S. students perform in science at three age/grade levels. The trends in test scores for 9-year-olds and 13-year-olds have been relatively flat. For 17-year-olds, scores dropped sharply during the 1970s and have since risen steadily, though not to the level achieved when the tests were first administered.

The results from the 2000 annual NAEP science assessment showed 29 percent of fourth-graders were proficient or above in science. By eighth grade, this percentage rises to 32 percent. However, by 12 grade the percentage plummets to just 18 percent.

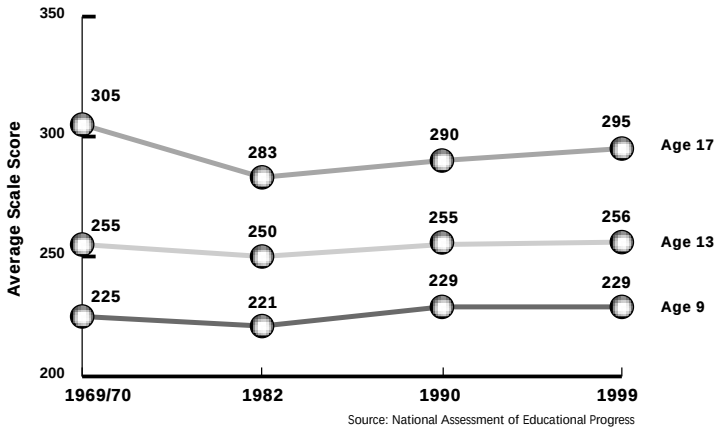
Results from the Third International Mathematics and Science Study (TIMSS) also indicate U.S. student achievement in science falls off as grade level increases. While U.S. fourth-graders are better than average in science compared to their peers in other countries, U.S. twelfth-graders score well below average.

INTERNET INFO

Information on the National Assessment of Education Progress, also known as "the Nation's Report Card," is available online at **http://nces.ed.gov/nationsreportcard**.

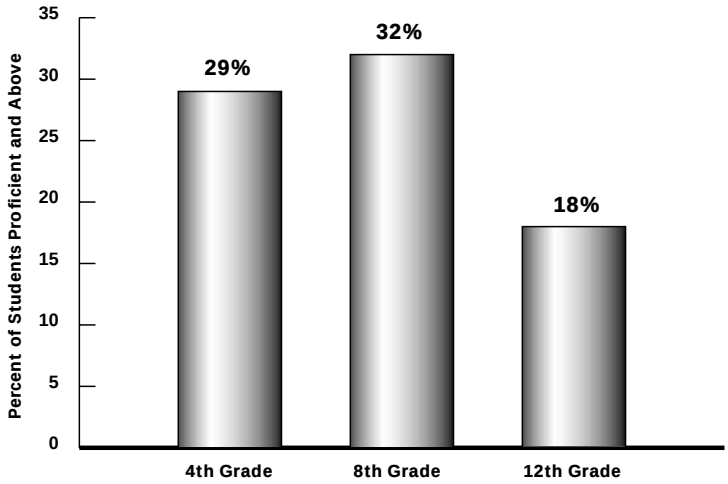
Information on international comparisons in education, including results from the Third International Math and Science Study, is available online at **http://nces.ed.gov/surveys/international**.

Flat Long-term Trend in U.S. Science Achievement



Source: National Assessment of Educational Progress

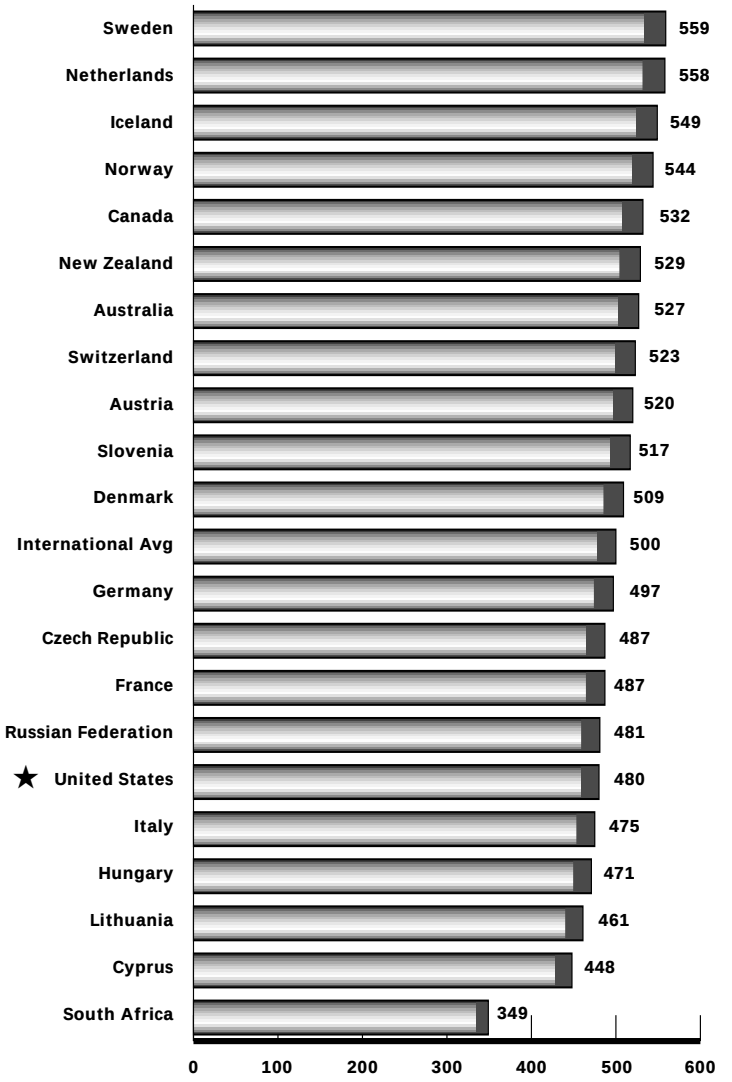
U.S. Science Proficiency Plummets in High School



Source: Nation's Report Card for Science: 2000

TIMSS 1998 - Science General Knowledge Achievement

Twelfth-Grade Scores in the Third International Math and Science Study



Source: National Center for Education Statistics

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Davey

Continued from page 1

could have on battles in various states to enact K-12 school choice vouchers.

Writing for the 7-2 majority, Chief Justice William Rehnquist stated clearly that the so-called Blaine Amendment in the constitution of Washington was "not at issue in this case." Born of late nineteenth century bigotry toward Catholic immigrants, those provisions in the state constitutions sought to erect bars to any form of aid to "sectarian" schools.

In its landmark 2002 *Zelman v. Simmons-Harris* decision, the Supreme Court held that Cleveland's vouchers for families choosing religious schools did not violate the Establishment Clause of the federal Constitution because parents were able to exercise "true private choice" among a variety of educational options, religious and secular. Voucher opponents then pegged their hopes on halting the spread of vouchers largely on Blaine Amendments in state constitutions.

Those voucher foes interpreted *Locke* as the broadly based ban they are seeking.

"This maintains an important barrier to efforts to fund school vouchers and other faith-based programs," declared the Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State. "Americans clearly have a right to practice their religion, but they can't demand that the government pay for it."

But Footnote 7, together with the historical context Rehnquist provided in his opinion, suggested the High Court was reaching back to the American founding to uphold only a narrow point—a state's prerogative not to subsidize vocational training of ministers. Kevin J. Hasson, president of the Becket Fund for Religious Liberty (whose *amicus* brief provoked Footnote 7), predicted the *Locke* decision "will have a very positive impact" on cases involving Blaine Amendments.

"Most States that sought to avoid an establishment of religion around the time of the founding placed in their constitutions formal prohibitions against using tax funds to support the ministry," Rehnquist wrote. While Washington State chose to enforce that specific bar, its Promise Scholarship Program—begun in 1999 and at issue in this case—actually "goes a long way toward including religion in its benefits," which is permissible, the Chief Justice added. Students may use their scholarships to attend religious schools so long as those institutions are accredited.

Officials of the Institute for Justice (IJ), the libertarian legal organization that is defending school voucher programs in Florida and Colorado as well as challenging the exclusion of religious options from long-standing school choice plans in Maine and Vermont, saw the *Locke* decision as no setback for their legal position or the school voucher movement generally.

"This decision should have no impact on our defense of Florida's Opportunity Scholarship Program because, unlike the program at issue in Washington State, Opportunity Scholarship funds are not training anyone to be ministers," said Clark Neily.

The IJ senior attorney added that while the Blaine Amendments, "with their notorious history of religious bigotry, had no bearing whatsoever on the *Davey* decision," opponents of school choice in Florida, by contrast, "have built their entire challenge to the school choice program around the state's Blaine Amendment."

To be sure, the High Court's reasoning disappointed those advocates who deemed as unfair Washington State's denial of a scholarship to Joshua Davey solely because of his plans to seek a career in the ministry. Davey was double-majoring in Pastoral Studies and Business Management and Administration at the private Northwest College; he had been granted a Promise Scholarship on the basis of academic excellence and financial need. State officials stripped him of the aid when he disclosed his career plans.

The American Center for Law and Justice, a public interest law firm associated with religious broadcaster Pat Robertson, represented Davey. ACLJ chief counsel Jay Sekulow said the decision "clearly sanctions religious discrimination" and runs counter to 50 years of Supreme Court precedent on the free exercise of religion. While the majority decision does not prohibit states from structuring scholarship programs to include seekers of degrees in devotional theology, he added, the High Court "missed an important opportunity to protect the constitutional rights of all students."

In a stinging dissent, Justice Antonin Scalia declared that, "When a state makes a public benefit generally available, that benefit becomes part of the baseline against which burdens on religion are measured; and when the State withholds that benefit from some individuals solely on the basis of religion, it violates the Free Exercise Clause no less than if it had imposed a special tax." Scalia was joined in dissent by Justice Clarence Thomas.

The Pew Forum on Religion and Public Life predicted "the ruling in this case could affect not only government aid programs for students who attend religious colleges and universities, but also government voucher programs for elementary and secondary education and faith-based initiatives in which government funding flows to religious social service providers."

But the ruling did not alter the reality that under the U.S. Constitution, the use of vouchers to promote school choice is permissible. The *Zelman* decision settled that. The battle over state constitutional provisions now moves across the country from Washington State to Florida.

Robert Holland is a senior fellow at the Lexington Institute, a think tank in Arlington, Virginia. His email address is **holland@lexingtoninstitute.org**.

INTERNET INFO

The *Locke v. Davey* decision is available through *PolicyBot*™ Point your Web browser to **http://www.heartland.org**, click on the *PolicyBot*™ button, and search for documents #**14599** (syllabus, 3pp.), #**14597** (Rehnquist majority opinion, 12pp.), #**14598** (Scalia dissent, 10pp.), and #**14600** (Thomas dissent, 2pp.). Background information on the case is available on the Pew Forum Web site at **http://pewforum.org**.

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